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like plan type during the first year and 5 renewal years (6-year compensation cycle).

(i) For purposes of this section, “like plan type” means PDP replaced with another PDP, MA or MA-PD replaced with another MA or MA-PD, or cost plan replaced with another cost plan.

(ii) Replacements between different plan types (for which a new compensation is paid) include—PDP and MA-PD, PDP and cost plans, or MA-PD and cost plans.

(4) Compensation may only be paid for the beneficiary’s months of enrollment during a plan year (that is, January through December).

(i) Subject to paragraph (a)(4)(ii) of this section, compensation payments may be made up front for the entire current plan year or in installments throughout the year.

(ii) When a beneficiary disenrolls from a plan during the—

(A) First 3 months of enrollment, the plan must recover all compensation paid to agents and brokers.

(B) Fourth through 12th month of their enrollment (within a single plan year), the plan must recover compensation paid to agents and brokers for those months of the plan year for which the beneficiary is not enrolled.

(5) Organizations and sponsors must establish a compensation structure for new and replacement enrollments and renewals effective in a given plan year. Compensation structures must be in place by the beginning of the plan marketing period, October 1.

(6) Compensation structures must be available upon CMS request including for audits, investigations, and to resolve complaints.

(b) It must ensure that all agents selling Medicare products are trained annually through a CMS endorsed or approved training program or as specified by CMS, on Medicare rules and regulations specific to the plan products they intend to sell.

(c) It must ensure agents selling Medicare products are tested annually by CMS endorsed or approved training program or as specified by CMS.

(d) Upon CMS’ request, the organization must provide to CMS, in a form consistent with current CMS guidance,

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the information necessary for it to conduct oversight of marketing activities.

(e) It must comply with State requests for information about the performance of a licensed agent or broker as part of a state investigation into the individual’s conduct. CMS will establish and maintain a memorandum of understanding (MOU) to share compliance and oversight information with States that agree to the MOU.

(f) A plan sponsor must report annually, as directed by CMS—

(1) Whether it intends to use independent agents or brokers or both in the upcoming plan year; and

(2) If applicable, the specific amount or range of amounts independent agents or brokers or both will be paid.

[73 FR 54250, Sept. 18, 2008, as amended at 73 FR 67412, Nov. 14, 2008; 76 FR 21569, Apr. 15, 2011; 76 FR 54634, Sept. 1, 2011; 77 FR 22168, Apr. 12, 2012]

§ 422.2276 Employer group retiree marketing.

MA organizations may develop marketing materials designed for members of an employer group who are eligible for employer-sponsored benefits through the MA organization, and furnish these materials only to the group members. These materials are not subject to CMS prior review and approval.

Subpart W [Reserved]

Subpart X—Requirements for a Minimum Medical Loss Ratio

SOURCE: 78 FR 31307, May 23, 2013, unless otherwise noted.

§ 422.2400 Basis and scope.

This subpart is based on section 1857(e)(4) of the Act, and sets forth medical loss ratio requirements for Medicare Advantage organizations, and financial penalties and sanctions against MA organizations when minimum medical loss ratios are not achieved by MA organizations.

§ 422.2401 Definitions.

Non-claims costs means those expenses for administrative services that are not—